

Calendar No. 1090

110TH CONGRESS
2D SESSION**S. 2489****[Report No. 110–506]**

To enhance and provide to the Oglala Sioux Tribe and Angostura Irrigation
Project certain benefits of the Pick-Sloan Missouri River basin program.

IN THE SENATE OF THE UNITED STATES

DECEMBER 14, 2007

Mr. JOHNSON (for himself and Mr. THUNE) introduced the following bill;
which was read twice and referred to the Committee on Indian Affairs

SEPTEMBER 25 (legislative day, SEPTEMBER 17), 2008

Reported by Mr. DORGAN, without amendment

A BILL

To enhance and provide to the Oglala Sioux Tribe and Angostura Irrigation Project certain benefits of the Pick-Sloan Missouri River basin program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Oglala Sioux Tribe
5 Angostura Irrigation Project Modernization and Develop-
6 ment Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) Congress approved the Pick-Sloan Missouri
4 River Basin Program by passing the Act of Decem-
5 ber 22, 1944 (commonly known as the “Flood Con-
6 trol Act of 1944”) (33 U.S.C. 701–1 et seq.)—

7 (A) to promote the economic development
8 of the United States;

9 (B) to provide for irrigation in regions
10 north of Sioux City, Iowa;

11 (C) to protect urban and rural areas from
12 devastating floods of the Missouri River; and

13 (D) for other purposes;

14 (2) the Angostura Unit—

15 (A) is a component of the Pick-Sloan pro-
16 gram; and

17 (B) provides for—

18 (i) irrigation of approximately 12,218
19 acres of productive farm land in South Da-
20 kota; and

21 (ii) substantial recreation and fish
22 and wildlife benefits;

23 (3) the Commissioner of Reclamation has deter-
24 mined that—

1 (A) the national economic development
2 benefits from irrigation at the Angostura Unit
3 total approximately \$3,410,000 annually; and

4 (B) the national economic development
5 benefits of recreation at Angostura Reservoir
6 total approximately \$7,100,000 annually;

7 (4) the Angostura Unit impounds the Cheyenne
8 River 20 miles upstream of the Pine Ridge Indian
9 Reservation in South Dakota;

10 (5) the Reservation experiences extremely high
11 rates of unemployment and poverty;

12 (6) there is a need for economic development on
13 the Reservation;

14 (7) the national economic development benefits
15 of the Angostura Unit do not extend to the Reserva-
16 tion;

17 (8) the Angostura Unit may be associated with
18 negative effects on water quality and riparian vege-
19 tation in the Cheyenne River on the Reservation;

20 (9) modernization of the irrigation facilities at
21 the Angostura Unit would—

22 (A) enhance the national economic develop-
23 ment benefits of the Angostura Unit; and

1 (B) result in improved water efficiency and
 2 environmental restoration benefits on the Res-
 3 ervation; and

4 (10) the establishment of a trust fund for the
 5 Oglala Sioux Tribe would—

6 (A) produce economic development benefits
 7 for the Reservation comparable to the benefits
 8 produced at the Angostura Unit; and

9 (B) provide resources that are necessary
 10 for restoration of the Cheyenne River corridor
 11 on the Reservation.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) **ANGOSTURA UNIT.**—The term “Angostura
 15 Unit” means the irrigation unit of the Angostura ir-
 16 rigation project developed under the Act of August
 17 11, 1939 (16 U.S.C. 590y et seq.).

18 (2) **FUND.**—The term “Fund” means the Og-
 19 lala Sioux Tribal Development Trust Fund estab-
 20 lished by section 201(a).

21 (3) **PICK-SLOAN PROGRAM.**—The term “Pick-
 22 Sloan program” means the Pick-Sloan Missouri
 23 River basin program approved under the Act of De-
 24 cember 22, 1944 (33 U.S.C. 701–1 et seq.) (com-
 25 monly known as the “Flood Control Act of 1944”).

1 (4) PLAN.—The term “plan” means the devel-
 2 opment plan developed by the Tribe under section
 3 201(f).

4 (5) RESERVATION.—The term “Reservation”
 5 means the Pine Ridge Indian Reservation.

6 (6) SECRETARY.—The term “Secretary” means
 7 the Secretary of the Interior.

8 (7) TRIBAL COUNCIL.—The term “Tribal Coun-
 9 cil” means the governing body of the Tribe.

10 (8) TRIBE.—The term “Tribe” means the Og-
 11 lala Sioux Tribe of the Pine Ridge Indian Reserva-
 12 tion.

13 **SEC. 4. MODERNIZATION.**

14 (a) MODERNIZATION OF FACILITIES AT ANGOSTURA
 15 UNIT.—

16 (1) IN GENERAL.—The Secretary shall carry
 17 out the modernization and improvement of the facili-
 18 ties at the Angostura Unit as described in the Im-
 19 proved Efficiencies Alternative included in the report
 20 entitled “Final Environmental Impact Statement,
 21 Angostura Unit Contract Negotiation and Water
 22 Management (August 2002)”.

23 (2) NONREIMBURSABILITY.—The cost of the
 24 modernization and improvement of the facilities at

1 the Angostura Unit shall be carried out on a non-
2 reimbursable basis.

3 (b) DELIVERY OF WATER TO PINE RIDGE INDIAN
4 RESERVATION.—The Secretary shall provide for the deliv-
5 ery of the water saved through the modernization and im-
6 provement of the facilities of the Angostura Unit as an
7 instream flow of the Cheyenne River to be used for fish
8 and wildlife purposes and environmental restoration on the
9 Reservation.

10 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
11 authorized to be appropriated to carry out subsection (a)
12 \$4,660,000, to remain available until expended.

13 **SEC. 5. DEVELOPMENT.**

14 (a) OGLALA SIOUX TRIBAL DEVELOPMENT TRUST
15 FUND.—

16 (1) OGLALA SIOUX TRIBAL DEVELOPMENT
17 TRUST FUND.—There is established in the Treasury
18 of the United States a fund to be known as the “Og-
19 lala Sioux Tribal Development Trust Fund”, con-
20 sisting of any amounts deposited in the Fund under
21 this Act.

22 (2) FUNDING.—Not later than the first day of
23 the 11th fiscal year that begins after the date of en-
24 actment of this Act, the Secretary of the Treasury

1 shall deposit in the Fund, from the general fund of
2 the Treasury, \$92,500,000.

3 (3) INVESTMENT OF TRUST FUND.—

4 (A) IN GENERAL.—The Secretary of the
5 Treasury shall invest such portion of the Fund
6 as is not, in the judgment of the Secretary of
7 the Treasury, required to meet current with-
8 draws.

9 (B) ELIGIBLE OBLIGATIONS.—Notwith-
10 standing any other provision of law, the Sec-
11 retary of the Treasury shall invest the amounts
12 deposited under paragraph (2) and the interest
13 earned on those amounts only in interest-bear-
14 ing obligations of the United States issued di-
15 rectly to the Fund.

16 (C) INTEREST.—The Secretary of the
17 Treasury shall deposit interest resulting from
18 such investments into the Fund.

19 (4) PAYMENT OF INTEREST TO TRIBE.—

20 (A) WITHDRAWAL OF INTEREST.—On Oc-
21 tober 1st of each year, the Secretary of the
22 Treasury shall transfer the aggregate amount
23 of interest deposited into the Fund for the fis-
24 cal year to the Secretary for use in accordance
25 with subparagraph (C).

1 (B) AVAILABILITY.—Each amount trans-
2 ferred under subparagraph (A) shall be avail-
3 able without fiscal year limitation.

4 (C) PAYMENTS TO TRIBE.—

5 (i) IN GENERAL.—The Secretary shall
6 use the amounts transferred under sub-
7 paragraph (A) only for the purpose of
8 making payments to the Tribe, as such
9 payments are requested by the Tribe pur-
10 suant to tribal resolution.

11 (ii) LIMITATION.—Payments may be
12 made by the Secretary under clause (i)
13 only after the Tribe has adopted a plan
14 under paragraph (6).

15 (iii) USE OF PAYMENTS BY TRIBE.—
16 The Tribe shall use the payments made
17 under this subparagraph only for carrying
18 out projects and programs under the plan
19 prepared under paragraph (6).

20 (5) LIMITATION ON TRANSFERS AND WITH-
21 DRAWALS.—Except as provided in paragraphs (3)
22 and (4)(A), the Secretary of the Treasury shall not
23 transfer or withdraw any amount deposited into the
24 Fund under paragraph (2).

25 (6) DEVELOPMENT PLAN.—

1 (A) IN GENERAL.—Not later than 18
 2 months after the date of enactment of this Act,
 3 the Tribal Council shall prepare a plan for the
 4 use of the payments to the Tribe under para-
 5 graph (4).

6 (B) CONTENTS.—The plan shall provide
 7 for the manner in which the Tribe shall expend
 8 payments to the Tribe under paragraph (4) to
 9 promote—

10 (i) economic development;

11 (ii) infrastructure development;

12 (iii) the educational, health, rec-
 13 reational, and social welfare objectives of
 14 the Tribe and members of the Tribe; or

15 (iv) any combination of the activities
 16 described in clauses (i) through (iii).

17 (C) PLAN REVIEW AND REVISION.—

18 (i) IN GENERAL.—The Tribal Council
 19 shall make available for review and com-
 20 ment by the members of the Tribe a copy
 21 of the plan before the plan becomes final,
 22 in accordance with procedures established
 23 by the Tribal Council.

24 (ii) UPDATING OF PLAN.—

1 (I) IN GENERAL.—The Tribal
2 Council may, on an annual basis, re-
3 vise the plan.

4 (II) REVIEW AND COMMENT.—In
5 revising the plan, the Tribal Council
6 shall provide the members of the
7 Tribe opportunity to review and com-
8 ment on any proposed revision to the
9 plan.

10 (iii) CONSULTATION.—In preparing
11 the plan and any revisions to the plan, the
12 Tribal Council shall consult with the Sec-
13 retary and the Secretary of Health and
14 Human Services.

15 (D) AUDIT.—

16 (i) IN GENERAL.—The activities of
17 the Tribe in carrying out the plan shall be
18 audited as part of the annual single-agency
19 audit that the Tribe is required to prepare
20 pursuant to the Office of Management and
21 Budget circular numbered A-133.

22 (ii) DETERMINATION BY AUDITORS.—
23 The auditors that conduct the audit under
24 this subparagraph shall—

1 (I) determine whether funds re-
2 ceived by the Tribe under this section
3 for the period covered by the audit
4 were expended to carry out the plan
5 in a manner consistent with this sec-
6 tion; and

7 (II) include in the written find-
8 ings of the audit the determination
9 made under clause (i).

10 (iii) INCLUSION OF FINDINGS WITH
11 PUBLICATION OF PROCEEDINGS OF TRIBAL
12 COUNCIL.—A copy of the written findings
13 of the audit described in this subparagraph
14 shall be inserted in the published minutes
15 of the Tribal Council proceedings for the
16 session at which the audit is presented to
17 the Tribal Council.

18 (7) PROHIBITION OF PER CAPITA PAYMENTS.—
19 No portion of any payment made under this Act
20 may be distributed to any member of the Tribe on
21 a per capita basis.

22 (b) ELIGIBILITY OF TRIBE FOR CERTAIN PROGRAMS
23 AND SERVICES.—No payment made to the Tribe under
24 this Act shall result in the reduction or denial of any serv-
25 ice or program with respect to which, under Federal law—

1 (1) the Tribe is otherwise entitled because of
2 the status of the Tribe as a federally recognized In-
3 dian tribe; or

4 (2) any individual who is a member of the Tribe
5 is entitled because of the status of the individual as
6 a member of the Tribe.

7 (c) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated such sums as are nec-
9 essary to pay the administrative expenses of the Fund.
10 (d) DISCLAIMER OF EFFECTS.—Nothing in this Act
11 affects—

12 (1) any right or claim of the Tribe under the
13 Treaty of Fort Laramie of September 17, 1851 (11
14 Stat. 749);

15 (2) any right or claim of the Tribe under the
16 Treaty of Fort Laramie of April 29, 1868 (15 Stat.
17 635); or

18 (3) the reserved water rights of the Tribe under
19 the principles of *Winters v. United States* (207 U.S.
20 564 (1908)).

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